

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Corp.)	IB Docket No. 96-261
MCI WorldCom, Inc.)	
Sprint Communications Co. L.P.)	
)	
Petition for Enforcement of International)	
Settlements Benchmark)	
Rates for Service with Kuwait)	

ORDER

Adopted: June 3, 1999

Released: June 3, 1999

By the Chief, Telecommunications Division:

Introduction

1. In this Order, we approve the petition of AT&T Corp. ("AT&T"), MCI WorldCom, Inc. ("MCI WorldCom"), and Sprint Communications Company L.P. ("Sprint") (hereinafter referred to as ("Petitioners"))¹ requesting enforcement of the benchmark settlement rate of 15¢ that the Commission adopted in its *Benchmarks Order*² for international message telephone service with Kuwait. Petitioners request this action so that they will be in compliance with the rules adopted by the Commission in the *Benchmarks Order*.

2. In the *Benchmarks Order*, the Commission adopted benchmark settlement rates and a schedule of effective dates for these rates governing U.S. carriers in their settlement arrangements with

¹ Petition of AT&T, MCI WorldCom and Sprint for Enforcement of International Settlements Benchmark Rates for Service with Kuwait, IB Docket No. 96-261, February 25, 1999.

² *International Settlement Rates*, IB Docket 96-261, Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *recon. pending, aff'd. sub nom., Cable and Wireless P.L.C. v. FCC*, No. 97-1612, slip op. (D.C. Cir., January 12, 1999), 1888 WL 7824.

foreign carriers.³ The settlement rates and their scheduled effective dates are based primarily on country income levels. For the upper income category, which includes Kuwait, the benchmark rate is 15¢ per minute. Thus, the Commission's *Benchmarks Order* requires U.S. facilities-based carriers to negotiate a settlement rate with the carrier in Kuwait, the Ministry of Communications ("MOC"), that does not exceed 15¢ per minute. The rate applies to service provided from January 1, 1999. The settlement rate now in effect for service with Kuwait is 0.575 SDR (approximately 78¢ per minute), and it has not changed in fifteen years. We find that the Petitioners have been unsuccessful in their efforts to negotiate a settlement rate with MOC that complies with the *Benchmarks Order*. Therefore, to enforce the *Benchmarks Order* and ensure compliance by U.S. carriers, we grant the Petitioners' request. We direct all U.S. facilities-based carriers that provide service to Kuwait to conduct settlements with MOC for international message telephone service at a rate that does not exceed 15¢ per minute for service provided as of January 1, 1999. We also direct U.S. international carriers to use their best efforts to negotiate a settlement agreement with MOC that complies with the Commission's *Benchmarks Order*.

Background

3. In its *Benchmarks Order*, the Commission set forth its enforcement policy to ensure compliance with the benchmark settlement rates and their effective dates.⁴ As part of the enforcement effort, the Commission stated that it would take appropriate steps to ensure compliance by U.S. carriers with the requirements of the *Benchmarks Order*. The enforcement effort includes the Commission identifying foreign carriers that are "reluctant" to make meaningful progress in reducing their settlement rates to benchmark levels. Once the Commission identifies such carriers, it will notify responsible foreign government authorities about its concern with continued high settlement rates and the lack of meaningful progress in achieving lower rates, and seek their support in bringing about settlement rate reductions.⁵ The Commission also provided procedures that U.S. carriers may follow in cases where foreign carriers fail to respond to a U.S. carrier's efforts to negotiate settlement rates that comply with the requirements of the *Benchmarks Order*. As outlined in the *Benchmarks Order*, a U.S. international carrier seeking relief may file a petition with the Commission demonstrating that it has not been able to negotiate a settlement rate that complies with the rules and policies adopted in the *Benchmarks Order*. The U.S. carrier may request that the Commission take enforcement measures to ensure that no U.S. carrier pays the foreign carrier an amount exceeding the lawful benchmark

³ The current international accounting rate system was developed as part of a regulatory tradition in which international telecommunications services were supplied through a bilateral correspondent relationship between national monopoly carriers. An accounting rate is the price a U.S. facility-based carrier negotiates with a foreign carrier for handling one minute of international telephone service. Each carrier's portion of the accounting rate is referred to as the settlement rate. In almost all cases, the settlement rate is equal to one-half of the negotiated accounting rate.

⁴ See *Benchmarks Order* at ¶¶185-190.

⁵ See *id.* at ¶185.

settlement rate.⁶

4. In the case of Kuwait, the International Bureau wrote a letter to MOC in which the Bureau reiterated its support for reform of the international accounting rate system through multilateral discussions and requested MOC's urgent assistance in lowering the settlement rate for service between the United States and Kuwait.⁷ The Bureau noted the wide disparity between Kuwait's settlement rate and the Commission's benchmark rate and informed MOC that the Commission would be required to take appropriate enforcement measures against U.S. international carriers if the settlement rate exceeded 15c on January 1, 1999. In response to this letter, MOC informed the Bureau that it had already rejected the Commission's benchmarks policy and therefore "cannot act in accordance with the reductions proposed under Benchmark rules."⁸

5. Subsequently, the Petitioners jointly filed their petition requesting enforcement of the rules and requirements of the Commission's *Benchmarks Order* on the U.S.-Kuwait route. The Bureau issued a public notice on this petition.⁹ The Petitioners claim they have made good faith efforts to negotiate an agreement with MOC that complies with the *Benchmarks Order*, but that their attempts have failed to produce an agreement on a benchmark settlement rate. The petition includes affidavits of AT&T and MCI WorldCom employees with responsibility for their company's settlement arrangements with MOC. According to the affidavits, AT&T and MCI WorldCom notified MOC about the requirements that the Commission's *Benchmarks Order* imposes upon U.S. carriers. AT&T states that it informed MOC of the benchmark obligations during a meeting that took place in May 1998, and MOC's response was to propose a reduction in the settlement rate to 73.5c. Additional efforts by AT&T to negotiate reductions with MOC proved unsuccessful.¹⁰ MCI WorldCom states that it was unable to negotiate a benchmark settlement agreement with MOC, despite numerous contacts that included meetings and an exchange of letters.¹¹ MOC has not disputed the claims in the affidavits and, in fact, did not file comments in response to the petition. Instead, MOC simply informed the Commission that "[I]n accordance with the Ministerial Decree and on conformity with the decision taken during the recent Gulf Cooperation Council Minister's conference, Kuwait Administration rejects the application of FCC's Benchmark order by the U.S. Carriers in the USA-Kuwait telecommunications relations."¹²

⁶ See *id.* at ¶186.

⁷ See letter from Regina M. Keeney, FCC, to Sami K. Alamer, MOC, December 10, 1998.

⁸ See letter from Jasem Al-Wazzan, MOC, to Regina M. Keeney, FCC, February 13, 1999.

⁹ See Public Notice, Petitions for Enforcement of International Settlement Benchmark Rates, DA 99-479, March 10, 1999.

¹⁰ See Affidavit of Thomas R. Luciano, AT&T, February 17, 1999.

¹¹ See Affidavit of Donald H. deLaski, MCI WorldCom, February 23, 1999.

¹² See letter from Jasem Al-Wazzan, MOC, to Regina M. Keeney, FCC, April 5, 1999.

Discussion

6. The Commission's benchmark policy requires U.S. carriers to negotiate settlement rates with foreign carriers that do not exceed specific benchmark levels after specific dates.¹³ The Commission adopted the benchmarks policy because, despite its concerted action and repeated expressions of concern,¹⁴ as well as efforts by the International Telecommunication Union,¹⁵ accounting rates continue to exceed foreign carriers' costs to terminate international message telephone service from the United States. The Commission remains committed to achieving more cost-based accounting rates because high accounting rates inflate U.S. carriers' costs and, as a result, put upward pressure on the prices charged to U.S. consumers. The U.S. Court of Appeals for the D.C. Circuit upheld the *Benchmarks Order* and affirmed the Commission's authority to prescribe the maximum settlement rates U.S. international carriers may pay to foreign carriers.¹⁶

7. Foreign carriers have had ample time to make reasonable adjustments in the settlement rates they negotiate with U.S. international carriers. The Commission initially proposed its benchmark

¹³ The benchmark settlement rates and their effective dates are as follows:

<u>Income Category</u>	<u>Benchmark Rate</u>	<u>Effective Date</u>
Upper	15¢	January 1, 1999
Upper Middle	19¢	January 1, 2000
Lower Middle	19¢	January 1, 2001
Lower	23¢	January 1, 2002
Teledensity<1	23¢	January 1, 2003

See *Benchmarks Order* at ¶111 and ¶165.

¹⁴ See, e.g., *Regulation of International Accounting Rates*, CC Docket No. 90-337 (Phase II), Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 8040 (1992); Public Notice DA 96-105, 11 FCC Rcd 3152 (1996); *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd 3146 (1996); *Regulation of International Accounting Rates*, (Phase II), Fourth Report and Order, 11 FCC Rcd 20063 (1996); and *International Settlement Rates*, IB Docket No. 96-261, Notice of Proposed Rulemaking, FCC No. 96-484 (rel. December 19, 1996) (*Benchmarks Notice*).

¹⁵ See, e.g., *ITU-T Recommendation D.140*, "Accounting Rate Principles for International Telephone Services," Geneva (1992) (calling for "cost-orientated" accounting rates, generally within five years).

¹⁶ *Cable and Wireless P.L.C. v. FCC et al.*, slip op. at 13.

settlement rates in 1996.¹⁷ After receiving comments from a wide range of interested parties, the Commission adopted the *Benchmarks Order* on August 7, 1997. Because the benchmark rate for upper income countries such as Kuwait did not take effect until January 1, 1999, MOC had nearly two years since the Commission adopted benchmark rates to make the transition from its settlement rate with U.S. carriers in 1996 to the benchmark rate of 15¢. Many foreign carriers providing international service in upper income countries made the transition to the benchmark rate during this period and several negotiated settlement rates well below the 15¢ benchmark rate.¹⁸ In fact, international carriers in twenty-nine countries have settlement rates with U.S. international carriers that comply with the *Benchmarks Order* and international carriers in another seventeen countries have negotiated settlement agreements with U.S. international carriers that will bring them into compliance with the *Benchmarks Order*.

8. We find that the Petitioners have made a good faith effort to negotiate settlement agreements with MOC that would comply with the Commission's *Benchmarks Order*. The affidavits filed by the Petitioners establish that they: (1) informed MOC about the requirements the FCC's *Benchmarks Order* imposes on U.S. carriers regarding the benchmark settlement rate for Kuwait and its effective date; (2) exchanged letters with MOC on issues related to negotiating a new settlement rate agreement that would comply with the *Benchmarks Order*; and (3) convened meetings with MOC in an attempt to negotiate a new settlement agreement that would bring the U.S. carriers into compliance with the *Benchmarks Order*. MOC does not dispute the facts that are presented in the petition and, in response has simply informed the Commission that it refuses to negotiate the benchmark rate of 15¢ with U.S. carriers.

9. To enforce the Commission's *Benchmarks Order* and to ensure that U.S. international carriers provide service with Kuwait under settlement terms that comply with the Commission's policy, we direct all U.S. facilities-based carriers to conduct settlements with MOC for international message telephone service at a rate that does not exceed 15¢ per minute for service provided as of January 1, 1999. We also direct U.S. international carriers to continue their efforts to negotiate a settlement agreement with MOC that complies with the Commission's *Benchmarks Order*.

¹⁷ *Benchmarks Notice*. We note that the Commission's benchmarks policy is consistent with a recommendation adopted by the ITU in 1992 calling for cost-oriented, nondiscriminatory, transparent accounting rates to be implemented, generally over a five year period. See *ITU-T Recommendation D.140*, "Accounting Rate Principles for International Telephone Services," Geneva (1992). We note that the Commission had previously adopted benchmark ranges for countries in Asia and Europe. See *Regulation of International Accounting Rates*, CC Docket 90-337, Report and Order, 6 FCC Rcd 3552 (1991), *on recon.*, 7 FCC Rcd 8049 (1992).

¹⁸ Examples of settlement rates that are currently below the benchmark level include: Canada (10¢), Denmark (10.8¢), France (10.1¢), Germany (10.1¢), Hong Kong (7¢), Ireland (10.8¢), Italy (10.8¢), the Netherlands (9.5¢), Norway (8.5¢), Sweden (5.4¢), and the United Kingdom (6.8¢).

Ordering Clauses

10. Accordingly, IT IS ORDERED that the petition of AT&T, MCI WorldCom, and Sprint for enforcement of the Commission's *Benchmarks Order* for service with MOC in Kuwait is GRANTED.

11. IT IS FURTHER ORDERED that all U.S. facilities-based international carriers providing service with MOC in Kuwait shall conduct settlements for service provided on and after January 1, 1999 at a rate that does not exceed the benchmark settlement rate of 15c per minute.

12. IT IS FURTHER ORDERED that U.S. facilities-based international carriers negotiate a settlement rate with MOC in Kuwait that complies with the rules and requirements of the Commission's *Benchmarks Order*.

13. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (*see* 47 C.F.R. Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION



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